

UNITED STATES OF AMERICA,

Plaintiff,

v.

CONEXANT SYSTEMS, INC.,  
ROCKWELL INTERNATIONAL CORP.

Defendants.

Civil Action No. \_\_\_\_\_

Judge \_\_\_\_\_

Judge \_\_\_\_\_

## CONSENT DECREE

## TABLE OF CONTENTS

I. <u>BACKGROUND</u> .....	1
II. <u>JURISDICTION</u> .....	2
III. <u>PARTIES BOUND</u> .....	2
IV. <u>DEFINITIONS</u> .....	2
V. <u>STATEMENT OF PURPOSE</u> .....	4
VI. <u>PAYMENT OF RESPONSE COSTS</u> .....	4
VII. <u>FAILURE TO COMPLY WITH CONSENT DECREE</u> .....	5
VIII. <u>COVENANT NOT TO SUE BY PLAINTIFF</u> .....	6
IX. <u>RESERVATION OF RIGHTS BY UNITED STATES</u> .....	6
X. <u>COVENANT NOT TO SUE BY SETTLING DEFENDANTS</u> .....	8
XI. <u>EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION</u> .....	8
XII. <u>OBLIGATIONS UNDER UNILATERAL ADMINISTRATIVE ORDER</u> .....	9
XIII. <u>CERTIFICATION</u> .....	9
XIV. <u>NOTICES AND SUBMISSIONS</u> .....	9
XV. <u>RETENTION OF JURISDICTION</u> .....	10
XVI. <u>INTEGRATION/APPENDICES</u> .....	10
XVII. <u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u> .....	11
XVIII. <u>SIGNATORIES/SERVICE</u> .....	11
XIX. <u>FINAL JUDGMENT</u> .....	11

UNITED STATES OF AMERICA,

Plaintiff,

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CIVIL ACTION No. \_\_\_\_\_

CONEXANT SYSTEMS, INC.,

ROCKWELL INTERNATIONAL CORP.,

Defendants.

Judge \_\_\_\_\_

## I. BACKGROUND

C. The United States and Settling Defendants agree, and this Court by entering this

Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607 and 9613(b), and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.
- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Existing Contamination" shall mean:

1. any hazardous substances, pollutant or contaminant, present or existing on or under the Site as of the effective date of this Consent Decree;

2. any hazardous substances, pollutant or contaminant, that migrated from the Site prior to the effective date of this Consent Decree; and

3. any hazardous substances, pollutants or contaminants, presently at the Site that migrate from the Site after the effective date of this Consent Decree.

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

j. "Parties" shall mean the United States and the Settling Defendants, Conexant Systems, Inc. and Rockwell International Corporation.

k. "Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid or may be required to pay at or in connection with the Site.

l. "Plaintiff" shall mean the United States.

m. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

n. "Settling Defendants" shall mean Conexant Systems, Inc. and Rockwell International Corporation and its respective subsidiaries and affiliates.

o. "Site" shall mean the Recticon/Allied Steel Superfund Site, encompassing approximately 4.7 acres, located at Parkerford, East Coventry Township, Chester County, Pennsylvania, and depicted generally on the map attached as Appendix A.

p. "United States" shall mean the United States of America, including its

departments, agencies and instrumentalities.

#### **V. STATEMENT OF PURPOSE**

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants to make a cash payment of \$357,694 to address their potential liability at the Site as provided in the Covenant Not to Sue by Plaintiff in Section VIII, and subject to the Reservation of Rights by United States in Section IX.

#### **VI. PAYMENT OF RESPONSE COSTS**

5. Within 60 days of entry of this Consent Decree, Settling Defendants shall pay to the EPA Hazardous Substance Superfund \$357,694.

6. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2004v00560, the EPA Region III and Site Spill ID Number 03S5, and DOJ Case Number 90-11-2-902/2. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Eastern District of Pennsylvania following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

Office of the United States Attorney  
Financial Litigation Unit  
615 Chestnut Street  
Suite 1250  
Philadelphia, PA 19106-4476

7. At the time of payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions) and to:

Barbara Borden  
Regional Financial Management Officer (3PM30)  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103; and

Docket Clerk  
Office of Regional Counsel (3RC00)  
U.S. Environmental Protection Agency

1650 Arch Street  
Philadelphia, PA 19103

8. The total amount to be paid pursuant to Paragraph 5 shall be deposited in the Recticon/Allied Steel Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

## **VII. FAILURE TO COMPLY WITH CONSENT DECREE**

9. Interest on Late Payments. If Settling Defendants fail to make any payment under Paragraph 5 by the required due date, interest shall continue to accrue on the unpaid balance through the date of payment. Interest shall accrue at the same rate set forth in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

10. Stipulated Penalty.

a. If any amounts due under Paragraph 5 are not paid by the required due date, Settling Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the interest required by Paragraph 9, \$1500 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 03S5, and DOJ Case Number 90-11-2-902/2. Settling Defendants shall send the check (and any accompanying letter) to the following address, or such other address as EPA may designate upon written notice to the Settling Defendants:

United States Environmental Protection Agency, Region III  
Attention: Superfund Accounting  
P.O. Box 360515  
Pittsburgh, PA 15251-6515

c. At the time of each payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions) and to:

Barbara Borden (3PM30)  
Regional Financial Management Officer  
U.S. Environmental Protection Agency

1650 Arch Street  
Philadelphia, PA 19103; and

Docket Clerk  
Office of Regional Counsel (3RC00)  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

#### **VIII. COVENANT NOT TO SUE BY PLAINTIFF**

13. Covenant Not to Sue by United States. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination. With respect to present and future liability, this covenant not to sue shall take effect upon receipt by EPA of all payments required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

#### **IX. RESERVATION OF RIGHTS BY UNITED STATES**

14. Reservation of Rights with regard to Settling Defendants. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 13. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:



a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability, based upon Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendants, except in compliance with the Administrative Order for Remedial Design/Remedial Action ("RD/RA Order"), EPA Docket No. III-94-16-DC;

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

f. liability for failure of Settling Defendants to comply with Administrative Order for Remedial Design/Remedial Action, Docket No. III-94-16-DC;

g. With respect to any claim or cause of action asserted by the United States, the Settling Defendants shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

15. United States' Additional Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to or subsequent to entry of the Consent Decree:

(i) conditions at the Site, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received, in whole or in part, and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

#### **X. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

16. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or

this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

17. Except as provided in Paragraph 19 (Waiver of Claims) and Paragraph 22 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 14 (c) - (g), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

18. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

#### **XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

19. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 19, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

20. Contribution Protection with regard to Settling Defendants. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with Existing Contamination at the Site, by the United States or any other person. The "matters addressed" in this Consent Decree do not include those response costs or response actions as to which the

United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

21. Settling Defendants agree that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

22. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VIII.

## **XII. OBLIGATIONS UNDER UNILATERAL ADMINISTRATIVE ORDER**

23. Settling Defendants have been performing work, pursuant to the RD/RA Order. Nothing in this Agreement shall abrogate Settling Defendants' ongoing obligations under the RD/RA Order, including, but not limited to, the performance of operation and maintenance of the groundwater remediation system at the Site as required by the RD/RA Order.

## **XIII. CERTIFICATION**

24. Settling Defendants hereby certify that, to the best of each of their knowledge and belief, after thorough inquiry, they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to their potential liability regarding the Site since notification of potential liability by the United States or the Commonwealth or the filing of suit against them regarding the Site and that they have fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

## **XIV. NOTICES AND SUBMISSIONS**

25. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change

to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-2-902/2)  
P.O. Box 7611  
Washington, D.C. 20044-7611

As to EPA:

Robert S. Hasson  
Assistant Regional Counsel (3RC41)  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

As to Settling Defendant, Conexant Systems, Inc.:

Harshad R. Vaidya  
Conexant Systems, Inc.  
400 MacArthur Boulevard  
Newport Beach, CA 92660

As to Settling Defendant, Rockwell International Corporation:

**XV. RETENTION OF JURISDICTION**

26. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XVI. INTEGRATION/APPENDICES**

27. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. Appendix A, a map of the Site, is attached to and incorporated into this Consent Decree.

## **XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

28. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

29. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any of the Parties and the terms of the agreement may not be used as evidence in any litigation between or among the Parties.

## **XVIII. SIGNATORIES/SERVICE**

30. The undersigned representatives of each Settling Defendant to this Consent Decree and the Chief/Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division of the United States Department of Justice certify that they are authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Parties to this document.

31. Settling Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

32. Settling Defendants shall each identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

## **XIX. FINAL JUDGMENT**

33. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. Conexant Systems, Inc., and Rockwell International Corp., relating to the Recticon/Allied Steel Superfund Site.

FOR THE UNITED STATES OF AMERICA 

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W. BENJAMIN FISHEROW  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

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JEFFREY D. TALBERT  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611

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PATRICK L. MEEHAN  
United States Attorney  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106-4476  
(215) 861-8200

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DONALD S. WELSH  
Regional Administrator, Region III  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

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LYDIA ISALES  
Acting Regional Counsel  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

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ROBERT S. HASSON  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of U.S. v. Conexant Systems, Inc., and Rockwell International Corp. relating to the Recticon/Allied Steel Superfund Site.

FOR DEFENDANT CONEXANT SYSTEMS INC.

Date: 5/29/06

\_\_\_\_\_  
Dennis O'Reilly  
Senior V.P., Legal Department  
Conexant Systems, Inc.  
4000 MacArthur Boulevard  
Newport Beach, CA 92660-3095

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Dennis O'Reilly  
Title: Senior V.P. legal department  
Address: 4000 MacArthur Blvd, Newport Beach CA 92660-3095

FOR DEFENDANT ROCKWELL INTERNATIONAL CORP.

Date: 5/25/06

\_\_\_\_\_  
Vice President, Law  
Rockwell Automation, Inc.  
P/K/a Rockwell International Corp.

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Gary Ballesteros  
Title: Vice President, Law  
Address: 1201 South 2nd Street  
Milwaukee, WI 53204